



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2653**

## **Appeal PA07-161**

### **Ministry of Community and Social Services**



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## **NATURE OF THE APPEAL:**

The Ministry of Community and Social Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for “a complete copy of [the requester’s] Ontario Works [OW] and Ontario Disability Support Program [ODSP] files.”

The Ministry identified approximately 454 pages of records as responsive to the request and issued a decision letter granting access to the files, nearly in their entirety. The Ministry relied on the exemption in section 49(b) (personal privacy) of the *Act* to withhold some information on two of the pages.

The requester, now the appellant, appealed the Ministry’s decision to this office.

A mediator was appointed to try to resolve the issues between the parties. The appellant advised the mediator that he was not interested in pursuing the Ministry’s decision to withhold information under section 49(b). However, the appellant indicated that he believed that additional records and information should exist as part of his Ontario Works and Ontario Disability Support Program files. Accordingly, the adequacy of the Ministry’s search for records was added as an issue in this appeal.

It was not possible to resolve matters through mediation. Accordingly, the appeal was transferred to adjudication where it was assigned to me to conduct an inquiry.

Initially, I sent a Notice of Inquiry outlining the background and issues in this appeal to the Ministry to seek representations. When I received the Ministry’s representations, I sent a complete copy of them to the appellant, along with a modified Notice of Inquiry, to invite his representations. Following an exchange of correspondence between this office and the appellant, which was required to clarify matters related to this inquiry, I received submissions from the appellant.

## **DISCUSSION:**

### **REASONABLE SEARCH**

The appellant believes that additional records responsive to his request should exist and has also expressed the concern that information is missing from the records that have been disclosed to him by the Ministry.

#### **General Principles**

In appeals, such as this one, that involve a claim that additional responsive records exist, the issue to be decided is whether the institution in question has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out by the Ministry was reasonable in the circumstances, I will uphold it. If I am not satisfied, further searches may be ordered.

The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, the Ministry must provide sufficient evidence to show that it has made a

reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records that are reasonably related to the request [Orders M-282, P-458, M-909, PO-1744 and PO-1920]. Furthermore, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

## **Background**

In my view, the mere recitation of the parties' representations does not offer adequate context for this appeal. A more complete understanding of the appellant's concerns about the Ministry's response to the request for his complete income support files requires some further elaboration to explain the differing focus of the parties' representations.

As I understand it, the appellant's request flows from a desire to obtain further information related to decisions made by the Ministry in 2004 with respect to a specific income support matter.

Upon receipt of the second party Notice of Inquiry and a copy of the Ministry's representations, the appellant contacted this office to convey concern about the wording used in the document to represent the issues. The appellant expressed an unwillingness to provide submissions for the purposes of this inquiry absent assurances that I would consider the concerns raised by him regarding information he thought should have been identified and provided by the Ministry. In seeking to offer this assurance, but also to clarify the scope of my authority, I wrote the following to the appellant in a November 13, 2007 letter:

To be clear, this appeal relates only to the Ministry's access decision under the *Act*. I do not have jurisdiction over, nor will I be considering in this inquiry, any other decision the Ministry may have made as regards the subject matter of the information you had been seeking from the Ministry. ...

As I previously stated in my September 19, 2007 letter to you, "my inquiry includes consideration of the Ministry's identification of, and search for, information you believe is missing, *notwithstanding* the term used to identify the issue".

For greater certainty, you may consider that where the word "record" is used under the issue outline, this also includes, by inference, information. You may make submissions on that basis.

Following this clarification, the appellant submitted representations. This order is written in consideration of these submissions and those of the Ministry, as summarized briefly below.

## **Representations**

### *Representations of the Ministry*

The Ministry submits that it conducted “three thorough searches” to locate records related to the appellant’s ODSP/OW file, and that it provided the appellant with complete copies of his ODSP and OW files.

The Ministry’s representations describe the mandate and function of the two branches of the Social Policy Development Division of the Ministry that are responsible for the ODSP and OW programs, as well as the structure of the Regional Offices of the Program Management Division. In explaining the delivery of ODSP income support programs across the province, the Ministry notes that there are nine regional offices, with nearly 1200 staff, in 54 local ODSP sites across the province.

The Ministry explained that individual clients can request access to their ODSP records either by contacting their local ODSP/OW office or by contacting the Regional Director, as that person functions as the decision-maker for the purposes of the *Act*. The Ministry states that each ODSP client has a designated master file where paper records documenting eligibility for assistance are stored. Program delivery is supported by an electronic system called the Service Delivery Model Technology (SDMT) which records ongoing case activity and communications. The Ministry advises that received correspondence is reviewed by the assigned staff member and then streamed to the master file.

The procedure for submitting access requests for the Ministry’s OW program resembles that for the ODSP program in that an individual may make the request through their local OW office, or through the Privacy Representative who is based in the Timmins office. The file and mail procedures for OW records management also closely resemble those described previously for the ODSP program with use of a master file for paper records and the SDMT for electronic records. The Ministry notes that when an OW client is granted ODSP and exits the OW program, the client’s master file is forwarded to the local Ministry office in South Porcupine and ODSP assumes responsibility for the client and master file.

In response to specific questions posed in the Notice of Inquiry, the Ministry states that the regional freedom of information representative for the District of Cochrane Social Services Administration Board was contacted and asked to search the appellant’s master file, electronic records, and all filing bins. Electronic records in the SDMT and the Caseworker Technology (CWT) database were reviewed. The locations searched included the mail file room, ORFUS file room, and the Terminal Room (archived records). The participants in the search were the file clerk, the Privacy Officer, and Case Aides located at the various Cochrane District sites. The Ministry states that the searches resulted in the location of the appellant’s master file, which was then forwarded to the ODSP office in North Bay. The Ministry confirms that no records related to the appellant’s request have been archived or destroyed.

Attached as an appendix to the Ministry's representations was a handwritten activity log explaining the activities of the regional freedom of information representative.

*Representations of the Appellant*

The appellant's representations, dated October 1, November 23 and November 24, 2007, were accompanied by various attachments for my consideration. The attachments consist of copies of correspondence between the appellant and the Ministry for the time period of August to November 2004, correspondence from the appellant's MPP to the Ministry, and various other personal documents of the appellant.

In response to his review of the Ministry's representations, the appellant remarks that these contain no reference to information missing from the records or to documents he believes should exist in his file. In the appellant's view, both the missing information and the missing documents are critical to the determination of a certain matter related to his income support.

With respect to the Ministry's search for records, the appellant expresses particular interest in the Ministry's failure to locate his September 2, 2004 letter, which he indicates was sent to the Ministry to respond to the initial (August 23, 2004) correspondence he received regarding the income support matter. The appellant states that the Ministry has long claimed not to have received this September 2, 2004 letter, a copy of which was provided to me for this inquiry.

On copies of several of the records disclosed to him by the Ministry pursuant to the access request, the appellant has made handwritten notations. In these notes, the appellant refers to information he believes is missing from the records, including the identity of the individual responsible for the decisions conveyed in correspondence. On a copy of the Ministry's October 21, 2004 letter to him, there are handwritten notations reading, "No name. No signature. Document exists, information not."

The appellant appears to be calling into question the validity of the decisions contained in the correspondence due to the absence of the signature and/or the name of the individual responsible for the decisions. The appellant draws my attention to the request he made in his September 2, 2004 letter to the Ministry that these decision letters be re-issued with the name and signature of the responsible individuals inserted. That the Ministry apparently chose to inform him of the name of the responsible person in separate correspondence, but not reissue these letters, seems to have provided the impetus for the appellant's appeal to this office.

The remainder of the appellant's representations are largely concerned with objections to the Ministry's handling of his income support matter. For the purposes of this order, it is not necessary to canvas these submissions further.

## **Analysis and Findings**

As previously stated, in appeals involving a claim that additional records or information responsive to a request exist, the issue to be decided is whether an institution has conducted a reasonable search for these as required by section 24 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records or information might exist must still be provided.

Having considered the representations of the Ministry and the appellant, as well as the general circumstances of this appeal, I am satisfied that the Ministry has provided sufficient evidence to show that it made a reasonable effort to identify and locate records and information responsive to the request.

There is some balancing to be brought to the task of reviewing an institution's search for responsive records. On one hand, the appellant must provide a reasonable basis for showing that such records may exist. In this appeal, the appellant has submitted documentation suggesting that at least one other record responsive to his request might exist, namely the September 2, 2004 letter to the Ministry. In my view, the appellant has provided a reasonable basis for his belief that this additional record should exist.

On the other hand, I am also mindful that the Ministry has conducted searches with knowledge of the nature of the records said to exist. And ultimately, the issue comes down to whether or not I am satisfied that the Ministry made a *reasonable* effort to identify and locate any existing records that might be responsive to the appellant's request. To reach my decision, I have considered whether the Ministry engaged an experienced employee to expend a reasonable effort to locate the specific records. Based on the information provided to me, I am satisfied that the Ministry did so.

Accordingly, based on the information provided by the Ministry and the appellant, and having considered the circumstances of this appeal, I am satisfied that the Ministry's search for records and information responsive to the request was reasonable in the circumstances.

I understand that this outcome will likely not prove satisfactory to the appellant. However, the limits of my authority are circumscribed by the *Act*. The scope of my authority includes a review of the records or information the appellant believes have not been located in response to the request, but it does not extend to a review of the format of information provided by the Ministry, or the context in which it appears. I mention this point in specific reference to the appellant's concern about the Ministry's identification of the decision-maker in the income support matter. As I informed the appellant in correspondence sent during this inquiry, the income support matter is simply outside my jurisdiction.

**ORDER:**

I uphold the Ministry's search for responsive records and dismiss this appeal.

Original signed by: \_\_\_\_\_  
Daphne Loukidelis  
Adjudicator

\_\_\_\_\_ March 31, 2008